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FROM USMISSION UNESCO PARIS

SENSITIVE

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SUBJECT: UNESCO: EXECUTIVE BOARD CONSIDERS DG'S PLANS
FOR "REORIENTATION" OF TROUBLED BRASILIA OFFICE

1. THIS IS A GUIDANCE REQUEST, SEE PARA 2.

2. (SBU) SUMMARY AND INTRODUCTION: AT THE MARCH 29-31 MEETING OF THE FINANCIAL AND ADMINSTRATIVE EXPERTS' GROUP, A MEMBER OF UNESCO'S LEGAL OFFICE SAID THAT HIS OFFICE HAD ADVISED THE SECRETARIAT THAT CERTAIN ACTIVITIES IN WHICH UNESCO IS SUB-CONTRACTING WORKERS FOR BRAZILIAN GOVERNMENT MINISTRIES MIGHT CONSTITUTE A LEGAL RISK FOR THE ORGANIZATION, GIVEN THE FACT THAT SUCH SUB-CONTRACTING PRACTICES HAVE GIVEN RISE TO CHARGES BROUGHT BY A BRAZILIAN PROSECTOR AGAINST THE HEAD OF THE UNESCO OFFICE AND THE UNESCO DG. THE SECRETARIAT REPORTED THAT UNESCO PLANNED TO CONTINUE

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SUCH ACTIVITIES THROUGH 2007, GIVEN THE LIMITED CAPACITY OF THE BRAZILIAN GOVERNMENT TO FULFILL THESE FUNCTIONS. ANOTHER MEMBER OF UNESCO'S LEGAL STAFF CONFIDED TO THE U.S. DELEGATION THAT THE CONTRACT CONDITIONS AND CONTRACTING PARTIES INVOLVED IN THE CONTINUING ACTIVITIES ARE DIFFERENT FROM THOSE THAT HAVE GIVEN RISE TO LEGAL CHARGES, WITHOUT SPECIFYING HOW, EVEN WHEN PRESSED; BUT HE ALSO ACKNOWLEDGED THAT HIS OFFICE HAD ADVISED THE SECRETARIAT TO LIMIT RISK BY DISCONTINUING THE CONTRACTS.

3. (SBU) MISSION REQUESTS GUIDANCE ON WHETHER IT IS ADVISABLE TO PRESS THE ISSUE at the executive board OF WHETHER THESE PROGRAMS PRESENT A LEGAL RISK AND SHOULD thus BE DISCONTINUED; AND IF SO, WHEN. IF THIS IS DESIRABLE, MISSION REQUESTS LANGUAGE TO AMEND THE CURRENT VERSION OF THE DRAFT REOSLUTION (174 EX/21, CURRENT VERSION IN LAST PARA OF THIS MESSAGE.) ANY U.S ATTEMPT TO INSERT SUCH LANGUAGE LIKELY WILL BE FORCEFULLY COUNTERED BY BRAZIL. AN AMERICAN, RREPORTEDLY ONE OF THE TWO CANDIDATES STILL IN THE RUNNING FOR THE POST OF DIRECTOR OF THE BRASILIA OFFICE, WOULD BE IN AN IDEAL POSITION TO EVALUATE THE SITUATION AND ENACT REFORMS - IF HE WERE TO BE CHOSEN. THIS APPOINTMENT WOULD PROBABLY REQUIRE THE APPROVAL OF THE BRAZILIAN DELEGATION TO UNESCO, CHARY OF ANY MAJOR CRITICISM OF THE BRASILIA OPERATION. END SUMMARY AND INTRODUCTION.

U.S. PRESSES FOR ACCOUNTING/REFORMS AT BRASILIA OFFICE

4. (U) THE CURRENT SESSION OF UNESCO'S EXECUTIVE BOARD WILL TACKLE THE ISSUE OF UNESCO'S TROUBLED BRASILIA OFFICE; AGENDA ITEM 19 PRESENTS THE OPPORTUNITY TO DEBATE "THE REPORT OF THE DIRECTOR GENERAL ON THE ACTIVITIES AND THE RESULTS OF THE UNESCO OFFICE IN BRASILIA" (174 EX 21). THIS ITEM HAS ALREADY BEEN DISCUSSED AT THE F/A EXPERTS' GROUP MEETING (MARCH 29-31) AND IS ON THE AGENDA OF THIS WEEK'S FINANCIAL AND ADMINISTRATIVE (F/A) COMMISSION AND PROGRAM AND EXTERNAL RELATIONS (P/X) COMMISSION AS WELL.

5. (U) IN ADVANCE OF THE FINANCIAL AND ADMINISTRATIVE (F/A) EXPERTS' MEETING, THE U.S AND ITS GENEVA GROUP PARTNERS DECIDED TO PRESS OTHER MEMBER STATES TO ADD SUBSTANCE TO THE DRAFT DECISION PROPOSED BY THE SECRETARIAT (PARA 40 DOCUMENT 174/EX 21), INCLUDING TO

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EXPRESS "CONCERN WITH ADMINISTRATIVE, FINANCIAL AND OTHER WEAKNESSES" AND TO REQUEST THE DIRECTOR GENERAL TO REPORT BACK ON BRASILIA OFFICE REFORM EFFORTS AT THE FALL 2006 EXECUTIVE BOARD. THE GENEVA GROUP SUCCEEDED IN INCLUDING SUCH LANGUAGE IN THE VERSION OF THE DRAFT RESOLUTION THAT WILL BE FORWARDED TO THE F/A AND P/X COMMISSIONS THIS WEEK (APRIL 6-11), ALONG WOITH LANGUAGE RECOMMENDING THAT THE DECENTRALIZATION PROCESS AND THE SECRETARIAT'S ACTION PLAN ON EXTRA-BUDGETARY

FUNDS BE INFORMED BY LESSONS LEARNED VIA THE BRASILIA OFFICE. (TEXT AT LAST PARA OF THIS MESSAGE) HOWEVER, THE BRAZILIAN OBSERVER TO THE F/A EXPERTS' GROUP SIGNALLED THAT HE WOULD PRESS FOR A MORE "BALANCED" RESOLUTION AT THIS WEEK'S F/A AND P/X COMMISSIONS THAT WOULD HIGHLIGHT WHAT HE DESCRIBED AS PRAISEWORTHY PROGRAMS INITIATED BY UNESCO'S BRASILIA OPERATION.

AS SOME THORNY LEGAL ISSUES PERSIST

16. (U) AT THE MEETING OF THE F/A EXPERTS' GROUP, LEGAL ISSUES AROSE THAT HAD NOT BEEN DEALT WITH IN THE DG'S REPORT ON THE BRASILIA OFFICE. AS THE PELIMINARY REPORT OF THE F/A EXPERTS' MEETING HIGHLIGHTS: "SOME MEMBERS ASKED THE LEGAL ADVISOR ABOUT THE COURT CASE REFERRED TO IN THE REPORT. THE LEGAL ADVISOR INFORMED THE GROUP THAT THERE IS A CIVIL ACTION ALLEGING ACTS OF ADMINISTRATIVE IMPROPRIETY THAT SEEKS APPLICATION OF SANCTIONS AGAINST HIGH RANKING FORMER OFFICIALS OF A PUBLIC AGENCY IN BRAZIL, AS WELL AS UNESCO AND ITS FORMER REPRESENTATIVE IN THE COUNTRY, FOR ALLEGEDLY CAUSING EXTENSIVE LOSSES TO THE PUBLIC COFFERS OF BRAZIL. THE CIVIL ACTION HAS BEEN SUSPENDED, PENDING A DETERMINATION BY BRAZIL'S SUPREME COURT AS TO WHETHER UNESCO HAS IMMUNITY FROM LEGAL PROCESS IN THIS CASE (NB: THE PROSECUTOR IS ARGUING THAT UNESCO'S IMMUNITY DOES NOT APPLY, AS IT WAS ACTING IN A FIELD OUTSIDE OF ITS MANDATE). ANOTHER MEMBER ASKED IF IT WOULDN'T BE OPPORTUNE IN THIS CONTEXT TO END IMMEDIATELY ALL ONGOING PROJECTS OUTSIDE OF UNESCO'S COMPETENCES. THE LEGAL ADVISOR STATED THAT THE LEGAL OFFICE ADVISED THAT ANY PROJECTS THAT WOULD NOT COMPLY WITH THE BRAZILIAN LEGISLATION BE TERMINATED EXPEDITIOUSLY. THE REPRESENTATIVE OF THE DIRECTOR GENERAL (HEAD OF FIELD OFFICES) INDICATED THAT A TRANSITION STRATEGY IS NECESSARY TO PERMIT A PROGRESSIVE TRANSFER OF THE ACTIVITIES OF THE PROJECTS IN QUESTION TO CONCERNED AUTHORITIES, IN ORDER NOT TO DETRACT FROM PROGRAMS OF NATIONAL IMPACT.

17. (SBU) U.S. MISSION OFFICERS QUESTIONED ANOTHER REPRESENTATIVE OF THE LEGAL ADVISOR'S OFFICE ON THE LEGAL RISK POSED BY CONTINUING THE SUB-CONTRACTING ACTIVITIES IN AREAS OUTSIDE OF UNESCO'S MANDATE (INCLUDING HEALTH). HE ACKNOWLEDGED THAT HIS OFFICE HAD ADVISED THE SECRETARIAT TO MINIMIZE ITS EXPOSURE TO RISK BY DISCONTINUING THE CONTRACTS, BUT SAID THAT THAT THE CONTRACT CONDITIONS AND CONTRACTING PARTIES INVOLVED IN THE CONTINUING ACTIVITIES ARE DIFFERENT FROM THOSE THAT HAVE GIVEN RISE TO LEGAL CHARGES. WHEN PRESSED, HOWEVER, HE DID NOT OFFER MORE DETAIL ON HOW THESE CONTRACTS DIFFERED.

18. (U) AT A SUBSEQUENT SESSION OF THE F/A EXPERTS' MEETING, THE LEGAL ADVISOR WHO IS MOST CLOSELY FOLLOWING THE BRASILIA DOSSIER CLARIFIED HIS POSITION. HE SAID THAT IT WOULD BE A MISTAKE TO CHARACTERIZE BRASILIA OFFICE ACTIVITIES AS "ILLEGAL" - THE TERM "CONTRARY TO BRAZILIAN LAW" WOULD BE MORE EXACT, HE SAID. IT IS FOR THAT REASON THAT AN APPROACH THAT MINIMIZES RISK IS IMPORTANT: "WE CANNOT JUDGE WHETHER A WINDING DOWN OF CURRENT OPERATIONS WOULD BE ACCEPTABLE TO A BRAZILIAN PROSECUTOR."

19. (U) TEXT OF RESOLUTION ADOPTED BY THE F/A EXPERTS' GROUP:

THE EXECUTIVE BOARD,

HAVING CONSIDERED DOCUMENT 174 EX/21, IN THE LIGHT OF DOCUMENTS 174 EX/27, 174 EX/29 AND 174 EX/INF.4

NOTING THE SCALE AND IMPORTANCE OF THE OPERATION MANAGED BY THE UNESCO BRASILIA OFFICE

CONCERNED WITH THE ADMINISTRATIVE, FINANCIAL AND PLANNING WEAKNESSES OF THE MANAGEMENT OF THE EXTRABUDGETARY ACTIVITIES BY THE UNESCO BRASILIA OFFICE AND IN PARTICULAR WITH THE INADEQUACY OF INTERNAL CONTROLS AND COMMUNICATIONS WITH HEADQUARTERS RECALLS THE IMPORTANCE FOR ACTIVITIES AT FIELD LEVEL TO BE IN LINE WITH UNESCO'S OBJECTIVES DEFINED IN THE C/4 AND C/5

TAKES NOTE OF THE ACTIONS TAKEN AND PLANNED BY THE DIRECTOR-GENERAL TO REORIENT THE OPERATIONS OF THE UNESCO OFFICE IN BRASILIA AND TO REMEDY THE DEFICIENCIES IN THE MANAGEMENT OF THE OFFICE AND MONITOR THE SCOPE OF THE OPERATIONS;

INVITES THE DIRECTOR-GENERAL TO CONTINUE TO IMPLEMENT HIS ACTION PLAN FOR THE REORIENTATION OF THE UNESCO OFFICE IN BRASILIA IN ACCORDANCE WITH DECISIONS 174 EX/. AND 174 EX/. AS WELL AS THE RECOMMENDATIONS FROM BOTH IOS AND THE EXTERNAL AUDITOR AND TO REPORT BACK TO

ITS 175TH SESSION.

REQUESTS THE DIRECTOR-GENERAL TO ENSURE THAT PROPOSALS FOR UNESCO'S ACTIVITIES IN BRAZIL ARE CONSISTENT WITH AN OVERALL STRATEGY FOR DECENTRALIZATION, AS PART OF THE RATIONAL DELIVERY OF PROGRAMMES AGAINST UNESCO'S PRIORITY OBJECTIVES; AND THAT LESSONS LEARNED FROM THE EXPERIENCE IN BRASILIA SHOULD BE TAKEN INTO ACCOUNT IN FURTHER DEVELOPING THE DECENTRALIZATION STRATEGY.

ALSO REQUESTS THE DIRECTOR-GENERAL TO TAKE FULL ACCOUNT OF THE LESSONS DERIVED FROM THE EXPERIENCE IN BRASILIA INCLUDING THE SPECIFIC RISKS INVOLVED WITH SELF-BENEFITING FUNDS WHEN DEVELOPING THE OVERALL STRATEGIC VISION AND ACTION PLAN CALLED FOR IN DECISION 174 EX/. PARA. .

OLIVER